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In the Supreme Court of the United States

OCTOBER TERM, 1942

No. 726

NATHAN MAYO AND ROY HUTCHINSON, APPELLANTS

v.

UNITED STATES OF AMERICA

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The findings of fact, conclusions of law, and opinions of the District Court (R. 109–122) are reported in 47 F. Supp. 552.

JURISDICTION

The judgment of the District Court was entered on October 26, 1942 (R. 116–117). The appeal was taken on January 13, 1943, (R. 125–127) and was allowed on the same date (R. 131–132). This Court noted probable jurisdiction on March 1, 1943 (R. 139). The jurisdiction of this Court rests on Sections 238 and 266 of the Judicial Code as amended.

QUESTIONS PRESENTED

1. Whether the labelling, tagging, and fee requirements of the Florida Commercial Fertilizer Law may be applied to fertilizer which the United States Government owns and distributes in Florida pursuant to the Soil Conservation and Domestic Allotment Act.

2. Whether appellants, State officials acting pursuant to the purported authority of the Florida Commercial Fertilizer Law, may seize such federally-owned fertilizer for failure to pay the inspection fees and to attach the tags required by that law.

STATUTES INVOLVED

The pertinent portions of the Constitution and statutes involved are set forth in the Appendix, *infra,* pp. 38–51.

STATEMENT

On September 19, 1942, the United States filed a verified complaint in the court below seeking to enjoin appellant Mayo (the Commissioner of Agriculture of the State of Florida), appellant Hutchinson (an Inspector in the Inspection Bureau of the Florida Department of Agriculture) and others from interfering with the United States and its agencies in the distribution in the State of Florida of fertilizer owned by the United States (R. 1–8). The allegations of the complaint

and the averments of an attached affidavit of Joseph L. Orr, Acting Director, Division of Special Programs, Agricultural Adjustment Agency (R. 9–46), may be summarized as follows:

The purposes of the Soil Conservation and Domestic Allotment Act (herein sometimes called the Federal Act) are to improve and preserve soil fertility, to promote economic use and conservation of land, to diminish exploitation and wasteful and unscientific use of national soil resources, to protect rivers and harbors against the results of soil erosion, and to reestablish the ratio between farm and nonfarm purchasing power (Sec. 7 (a), 16 U. S. C., sec. 590g (a)). The Act requires the Secretary of Agriculture to "encourage and provide for soil-conserving and soil-rebuilding practices" and provides for payments or grants in aid for carrying out the practices which the Secretary finds will tend to effectuate the policy of the Act (Secs. 7 (b), 8 (b), 16 U. S. C., secs. 590g (b), 590h (a)). Farmers who wish to participate in the program under the Act communicate with local agricultural associations, which are instrumentalities and agencies of the United States; the local associations instruct the farmers concerning the practices to be followed in order to receive the benefit payments (R. 10).

One of the practices involves the application of superphosphate fertilizer to the soil in connection with the planting of certain soil-conserving crops

such as legumes and grasses, which are peculiarly able to use superphosphate and to obtain nitrogen from the air and soil. The nitrogen so obtained by these crops is made available for future use by plowing them under and thereafter planting a commercial crop. This practice is essential and is designed to increase the nitrogen content of the soil, thereby compensating for the critical shortage of chemical nitrogen for fertilizer purposes because of its extensive use in munitions necessary for the war. (R. 2–3, 9–11.) Since many farmers are financially unable to purchase the fertilizer, the Government often makes it available to them in advance, and, after their performance of the prescribed practices, the cost of the fertilizer is deducted from the total benefit payment due to them. There would not be a sufficient supply of superphosphate fertilizer to meet the present needs, in view of the shortage of nitrogen, if it were not for the centralized purchase on a large scale by the United States and the consequent stimulation of production. (R. 9–11.)

Pursuant to this national soil conservation program (R. 3), the United States acquired fertilizer and was distributing it in the State of Florida in order to facilitate the planting of winter legumes not later than about October 15, 1942. It was necessary for the program to proceed without delay since the planting season for such soil conserving crops in Florida extended to approxi-

mately that date[1] (R. 3, 13). Under the purported authority of the Florida Commercial Fertilizer Law[2] (Florida Statutes, 1941, c. 576; Appendix, *infra,* pp. 45–51) (herein sometimes called

[1] At the hearing before a three-judge court, there was a further showing of a continuing need for protecting the Government's program beyond October 15, 1942, and that the Government's problem was not merely seasonal but recurrent and perennial (R. 77–78), and the court below so found (R. 110, 114–115).

[2] The Florida Commercial Fertilizer Law is a comprehensive statute regulating the inspection of commercial fertilizer manufactured, sold, distributed, or imported into the State of Florida. It establishes a standard for commercial fertilizer and requires manufacturers and importers of commercial fertilizer to file with the State Commissioner of Agriculture statments setting forth their agents in the State, and the name and guaranteed analysis of the brand of fertilizer offered for sale (Sec. 576.03). Sale before registration of the brand is made unlawful (Sec. 576.04). Every manufacturer shipping in lots of one ton or more must notify the Commissioner of Agriculture, on the date of shipment, of the name and address of the consignee, the point of destination, the quantity, the brands, and the number and initial of the car (Sec. 576.05). Each package of fertilizer "manufactured, imported, transported, distributed, stored, kept or offered for sale or sold in or into the State" is required to have a tag attached disclosing certain information as to the name of the manufacturer, and as to the contents which must meet certain requirements (Sec. 576.07). There must also be attached a stamp, label, or tag showing payment of the inspection fee (*ibid*) called for by Section 576.11. Every manufacturer, importer, or dealer must forward to the State Treasurer the money for his fee stamps together with his request for the stamps, and the Treasurer hands the request to the Commissioner of Agriculture who sends the stamps to the applicants (Secs. 576.12, 576.13). The sheriffs of the counties are authorized to seize and sell at public auction each package of fertilizer "imported into or sold" in the State

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the Florida law), however, defendants were interfering with and obstructing the United States in the exercise of its sovereign functions, by issuing and threatening to enforce "stop sale notices" prohibiting the distribution of the fertilizer, and by seizing and threatening to sell such fertilizer at public sale, on account of the failure of the United States to pay the inspection fee imposed by the Florida law and failure to obtain and attach tags to the containers of the fertilizer as required by that law (R. 3–4).[3]

Specific instances were cited in which the United States owned and was entitled to the im-

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which does not have the stamps attached (Sec. 576.15). A procedure is established for analysis of the fertilizer by the State Chemist on application of any purchaser (Sec. 576.19). Finally, it is made a misdeameanor for any person to manufacture, import, transport, distribute, store, keep, or offer for sale or sell any fertilizer without an attached tag disclosing the information required and the stamps showing payment of the fee (Secs. 576.26, 576.27).

[3] Such threats were alleged to have been embodied in a telegram sent on September 16, 1942, by appellant Mayo to the Secretary of Agriculture, stating that in his opinion the A. A. A. officials were ignoring Florida fertilizer inspection laws and that he was having all shipments of superphosphate, which did not show evidence of payment of inspection fees, seized and sold to the highest bidder, and that he was cancelling the right to do business of any concern "party to this high handed procedure" (R. 5). This telegram received wide publicity in an Associated Press Dispatch in the Florida papers on September 17, 1942, which stated further that Mayo "ordered seizure of Federal AAA fertilizer shipments into this State on which inspection fees have not been paid" (R. 4–5).

mediate and undisturbed possession of certain lots of superphosphate fertilizer purchased through the Department of Agriculture from various fertilizer producing companies in Georgia (R. 5–7, 28–43).[4] Such Government-owned fertilizer was shipped by direction of the Government from various points in Georgia under Government bills of lading consigned to Agricultural Associations in Florida, federal instrumentalities and agencies acting on behalf of the United States (R. 6, 7, 46A). Thereafter, appellants Mayo and Hutchinson issued "stop sale notices" to the administrative officers of the Agricultural Associations, directing them to withdraw the fertilizer from "sale" and to hold it "subject to further instructions" on the ground that the fertilizer was not registered and tagged as required by the Florida law (R. 5, 7, 12–13).

The complaint alleged that the property and transactions of the United States are immune from state interference, that the Florida Commercial Fertilizer Law did not apply to the property or transactions of the United States but, if

[4] The superphosphate fertilizer was purchased with funds appropriated by Congress in the Department of Agriculture Appropriation Act for the Fiscal Year ending June 30, 1943 (Public Law No. 674, 77th Cong. 2d Sess., p. 32), which provided that the amounts appropriated "shall be available for the purchase of seeds, fertilizers, lime, trees, or any other farming materials, or any soil terracing services, and making grants thereof to agricultural producers to aid them in carrying out farming practices approved by the Secretary of Agriculture" (R. 11).

construed so to apply, violated Article VI, Clause 2, of the Constitution of the United States, and that all actions of appellants pursuant thereto, directed against the Government, were void (R. 3–4). After asserting the necessity for immediate execution of the federal program and the imminent and irreparable injury to the United States from interference therewith (R. 7–8; see R. 13), the complaint prayed for a preliminary and permanent injunction against the seizures and threatened sales and to prevent any obstruction of the federal program under the Florida Commercial Fertilizer Law or otherwise (R. 8).

Upon the basis of the showing of imminent and irreparable injury made in the complaint and attached affidavit, District Judge Long issued a temporary restraining order on September 19, 1942, enjoining any interference with the distribution by the United States of federally-owned fertilizer, and ordered all defendants to show cause why the preliminary injunction prayed for in the complaint should not be granted (R. 47–48).[5] On September 28, 1942, the District Judge convened a three-judge court to hear the case, since it appeared from the complaint "that the relief sought provides for suspending or restraining the enforcement, operation, or execution" of a state

[5] The restraint embodied in the order of September 19, 1942, was duly extended by successive orders and by consent remained in effect pending hearing and determination of plaintiff's application for a temporary injunction (R. 53).

statute, the Florida Commercial Fertilizer Law (R. 50–51).

Defendants' answer (R. 53–68), filed October 23, 1942, admitted that the fertilizer involved was being distributed in Florida, "evidently by the United States or some of its agencies" (R. 57), admitted the issuance of the "stop sale notices" and the seizures of the fertilizer (R. 59), and admitted the threat to seize and sell fertilizer not complying with the Florida law (R. 60). Defendants, however, denied the legal consequences of these admitted facts (R. 58, 59, 60).[6]

In an affirmative defense, defendants alleged that the United States was merely a conduit for the delivery of fertilizer by manufacturers out of the state and that, by purchasing fertilizer out of state for shipment into the state, the Government was attempting deliberately to circumvent the Florida law (R. 61–64). The defendants also filed a counterclaim (R. 64–68), reaverring the allegations of the affirmative defense (R. 64), and alleging that the Government and the companies that sold the fertilizer to the Government were liable for payment of inspection fees under the Florida law, and requesting declaratory relief to that effect against all the companies and the Gov-

[6] In addition, the answer alleged that the complaint failed to state a cause of action (R. 53, 55–56), that the court lacked jurisdiction of the subject matter (R. 54–55), and that the Federal Act was unconstitutional (R. 55).

ernment (R. 67–68). On October 26, 1942, defendants moved to bring in the fertilizer companies as additional parties (R. 69).

The United States replied to the counterclaim, denying the affirmative allegations and asserting that the court was without jurisdiction to entertain a suit against the United States without its consent, that the joinder of other parties would be fatal to the jurisdiction of the court, and that the court had no jurisdiction over the controversy between the fertilizer companies and the defendants (R. 72–75).[7]

On October 26, 1942, a hearing was held before the three-judge court, and additional affidavits (R. 75–109) were filed by the Government and the defendants. At the hearing, defendants moved to dismiss the complaint, and the Government moved to dismiss the counterclaim and for summary judgment (R. 137).[8]

After the hearing, the court below (one judge dissenting) made findings of fact (R. 110–115), substantially as set forth in the complaint, in-

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[7] The reply (R. 72–75) was verified in Washington, D. C., on October 23, 1942, two days prior to the filing of the answer, an advance draft of the answer having been served pursuant to Judge Long's order of October 17, 1942 (R. 53). The draft answer was attached to the verification of the reply (R. 75) but is omitted from the printed record (R. 138). It is not disputed that the draft answer is substantially the same as the answer actually filed.

[8] Defendants waived the ten days' notice requirement of Rule 56 (c) of the Federal Rules of Civil Procedure before entry of summary judgment (R. 109–110, 116).

corporating the Government's affidavits, and filed conclusions of law (R. 115–116) holding that "property and transactions of the United States and its agencies referred to in the Findings of Fact are under the Constitution of the United States immune from and not subject to the application of the Federal Commercial Fertilizer Law relied on by defendants" (R. 115) and that the distribution of the fertilizer is "immune from the fertilizer inspection, analysis, control and fee requirements" of the Florida law (R. 116). The court, concluding that there was no genuine issue as to any material fact and that the Government was entitled to judgment as a matter of law (R. 115), issued a final decree (R. 116–117)[9] permanently enjoining defendants from—

> Taking any steps to enforce "stop sales notices" issued under the Florida Commercial Fertilizer Law relating to fertilizer sought to be distributed by or on behalf of the United States or persons acting on its behalf, or to apply the provisions of the Florida Commercial Fertilizer Law to the United States, any of its property or transactions or any persons engaged in its behalf in carrying on its program for the distribtuion of fertilizer and from threaten-

[9] The order entered on motions and the final decree (R. 116–117) also denied defendants' motion to dismiss the complaint, granted the Government's motion to dismiss the counterclaim, denied defendants' motion to add parties, and granted the Government's motion for summary judgment and for a permanent injunction (R. 116).

> ing to take such steps, and from cancelling the right to do business of any fertilizer company by reason of any transaction with the United States, and from interfering, impairing, or obstructing in any way the program of the United States with respect to the distribtuion of fertilizer.

Defendants were further required to vacate and set aside the "stop sale notices" and seizures involved in this action, and the court reserved jurisdiction of the cause and of the parties for the purpose of enforcement of the decree and for the granting of such further relief as might be appropriate (R. 117).

SUMMARY OF ARGUMENT

I

A. We do not contend that the Florida Commercial Fertilizer Law in its general application is not a valid exercise of the state's police power. Our contention, rather, is that it cannot be applied to the United States because the power of the Federal Government to dispose of its own property pursuant to Congressional direction is constitutionally beyond the reach of state regulation. The supremacy of the national government established by Article VI, Clause 2 of the Constitution prevents any state interference, by taxation or otherwise, with any federal function, and this Court has consistently so held. *Ohio* v. *Thomas,* 173 U. S. 276; *Johnson* v. *Maryland,* 254 U. S. 51.

This case does not involve an attempt by the state to effectuate a state purpose by means of a regulatory statute directed to persons within its control, with only the incidental consequence of an economic burden or other effect upon the United States. The restriction, here, is directly upon the Government itself. No case lends support to such asserted state authority.

B. In any event, under familiar and long established principles, appellants are without authority to seize the property of the United States. *The Siren,* 7 Wall. 152; *United States* v. *Alabama,* 313 U. S. 274.

ARGUMENT

Under appellants' present "specification of errors intended to be urged" (Br. 13–14), the sole issue remaining in this case is whether the United States, in the performance of its functions under the Soil Conservation and Domestic Allotment Act, is constitutionally immune from the operation of the Florida Commercial Fertilizer Law. On appeal to this Court, appellants assigned as error (R. 127–131) the action of the court below in overruling each of the defenses set up in the answer and special defense and in denying the relief sought in the counterclaim. However, in their brief (Br. 13–14), appellants have abandoned their points as to the dismissal of the counterclaim and the denial of the motion to add parties (Assignment of Errors 3; R. 127), the

jurisdiction of the court below (Assignments 9, 10, 11; R. 128–129),[10] and the failure of the com-

[10] While these assignments have been abandoned and are not argued in appellants' brief, we advert briefly to those which are jurisdictional in nature: (a) The court below, as constituted, clearly had jurisdiction to issue the preliminary and final injunction. The United States was party plaintiff (see Section 24 (1) of the Judicial Code, 28 U. S. C. § 41 (1)), and the complaint sought to enjoin state officials from enforcing or executing the Florida law on the ground that, as applied, it violated the Federal Constitution. See Sections 266 and 264 of the Judicial Code, 28 U. S. C. §§ 380, 378; *Gibbs* v. *Buck*, 307 U. S. 66; *Hale* v. *Bimco Trading Co.*, 306 U. S. 375. This was not a suit against the State (*Sterling* v. *Constantin*, 287 U. S. 378, 393; *Cavanaugh* v. *Looney*, 248 U. S. 453, 456; *Ex parte Young*, 209 U. S. 123); nor was it a suit challenging an order of a state administrative agency affecting utility rates nor a suit to enjoin collection of a state tax. Cf. Section 24 (1) of the Judicial Code, 28 U. S. C. § 41 (1). It was a suit to restrain interference with a federal function by means of a state regulatory system.

(b) The counterclaim was properly dismissed and the motion to add parties was properly denied. In a suit brought by the United States, counterclaims under the Tucker Act are beyond the court's jurisdiction (*United States* v. *Nipissing Mines Co.*, 206 Fed. 431, 434 (C. C. A. 2); cf. *United States* v. *Shaw*, 309 U. S. 495), and the Federal Rules do not enlarge the right to assert counterclaims against the United States (Rule 13 (d)). Even if a cause of action under the Tucker Act could be asserted in a counterclaim, the counterclaim here involved was improper because it sought declaratory relief. The Tucker Act extends to claims for money only and does not include other forms of relief. *United States* v. *Sherwood*, 312 U. S. 584. Moreover, the attempted joinder of additional parties would be fatal to the court's jurisdiction under the Tucker Act. *United States* v. *Sherwood*, *supra*; *Lynn* v. *United States*, 110 F. (2d) 586 (C. C. A. 5).

plaint to state a cause of action (Assignment 12, R. 129).

In the court below, appellants also urged that the Federal Act is unconstitutional; they took a like position in their assignments of error on appeal (Assignments 13, 14; R. 129–130). No such specification of error is now urged (Br. 13–14), and appellants do not advert to the issue in their brief in this Court. In these circumstances, we do not think it profitable to argue the issue of the Federal Act's constitutionality. Indeed, in any event, there can be no serious question of its validity. Cf. *Steward Machine Co.* v. *Davis,* 301 U. S. 548; *Helvering* v. *Davis,* 301 U. S. 619. And whatever may be the current force of *United States* v. *Butler,* 297 U. S. 1, it is plain that the instant Act suffers from none of the defects thought to be fatal in the *Butler* case, since here no tax is levied to carry out the Act's purposes but the funds come from a general appropriation; its purpose is not to control or regulate production but to control national soil resources (see Sec. 7 (a), 16 U. S. C., sec. 590g (a)); and there are no coercive contracts, since reliance is had solely upon the farmers' voluntary cooperation (Secs. 7 (a), 8 (b), 16 U. S. C., secs. 590g (a), 590h (b)).[11]

[11] Were the issue of constitutionality raised here, we would urge that the *Butler* case should in any event be reconsidered on the reasoning of the dissenting opinion of Mr. Justice Stone, 297 U. S. at 78–88.

Assuming, therefore, that the Soil Conservation and Domestic Allotment Act is a constitutional exercise of the powers under the general welfare clause, the decisive question lies within narrow compass. It is whether the State of Florida may, by seizure or otherwise, interfere with or prevent the distribution by the United States of its own property in the State of Florida pursuant to specific authority granted by Congress. A majority of the court below held that "the distribution of the fertilizer and fertilizer materials by the United States and its agencies * * * is, under the Constitution of the United States, immune from the fertilizer inspection, analysis, control and fee requirements of the Florida Commercial Fertilizer Law" (R. 115–116) and enjoined appellants from "interfering, impairing, or obstructing in any way the program of the United States with respect to the distribution of fertilizer" (R. 117). This decision, we submit, was proper, and in accord with the uniform and controlling decisions of this Court.

THE FLORIDA COMMERCIAL FERTILIZER LAW CANNOT CONSTITUTIONALLY APPLY TO THE FEDERAL PROPERTY AND TRANSACTIONS HERE INVOLVED, AND IN ANY EVENT THE SEIZURES OF THE FEDERAL PROPERTY WERE INVALID

A. The court below found (R. 110–115), and the record shows beyond genuine issue, that the United States was engaged in the distribution of fertilizer, owned by it, in the State of Florida pur-

suant to a federal soil conservation program designed to preserve and improve the fertility of and to accomplish other purposes enumerated in Section 7 of the Federal Act (16 U. S. C., sec. 590g). It found (R. 110–111) that the United States was distributing superphosphate fertilizer in Florida in order to facilitate the planting of certain legumes (during the then current and future crop years), and that these legumes were designed to increase the nitrogen content of the soil. Such increase was to compensate for the critical shortage for fertilizer purposes of chemical nitrogen due to its extended use for munitions in the war, and was to leave available for war purposes nitrogen which would otherwise have to be diverted unless a decrease in agricultural production were to result. The need for maximum food production was imperative at the time of the institution of this case and continues today (R. 11, 77, 110, 111); similarly the need for the planting of soil-enriching legumes is persistent, continuing, and perennial (R. 77–78, 110, 114–115). The function of the United States in furnishing food to our Allies under the Lend-Lease Act, the increased demands of our own armed forces, and the general shortage of farm labor have made it critically important that each acre of land which is devoted to raising food produce the maximum amount possible, and the fertilizing practices which the Government was here encouraging tend-

ed to achieve such maximum production and to prevent wasteful use of the soil (R. 11, 77, 110, 111).

The United States was the owner of all the fertilizer involved, having purchased it from various producers (R. 28–43, 113, 114), and had shipped it into the State of Florida as its own property in order to distribute it to farmers in the State (R. 111–114). The purchase and distribution of the fertilizer was authorized by the Soil Conservation and Domestic Allotment Act and by the Department of Agriculture Appropriation Act for the Fiscal Year ending June 30, 1943, appropriating $450,000,000 to be available, among other things, for the purchase of fertilizers.

It is undisputed that appellants, pursuant to the purported authority of the Florida Commercial Fertilizer Law, issued "stop sale notices" directing that the fertilizer be withdrawn from sale and be "held subject to further instructions," and that appellant Mayo ordered all shipments which did not show evidence of payment of inspection fees "seized by sheriff and sold to highest bidder" (R. 3–4, 5–7, 12–13, 112, 113, 114).

The execution of the program specifically provided for and authorized by Congressional acts cannot, we submit, be made subject to state stat-

utory schemes of regulation in the manner sought by appellants.[12]

We do not contend that the Florida law in its general application is an invalid exercise of the State's police power. A state may, under its police power, enact regulatory statutes providing for the labeling and inspection of a commodity such as fertilizer and the payment of inspection fees. Cf. *Patapsco Guano Company* v. *North Carolina Board of Agriculture,* 171 U. S. 345; see also United States Constitution, Art. I, Sec. 10. Our contention, however, is that a state cannot interfere with the power of the Federal Government to dispose of its own property pursuant to Congressional direction.

The supremacy clause of the Constitution[13] removes all state obstacles to the performance by

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[12] The complaint alleged (R. 3–4) and the court below concluded (R. 111–112) that the Florida law was not intended to apply to the United States. The opinion below placed primary reliance on the unconstitutionality of the Florida law as applied rather than on its construction, but stated that "the conclusion could be reached that by this statute of Florida the legislature had no intention of affecting the property of the Federal Government." (R. 121.) Cf. *Nardone* v. *United States*, 302 U. S. 379, 383; *United States* v. *Fox*, 94 U. S. 315; *Stanley* v. *Schwalby*, 147 U. S. 508, 514–517; Sutherland, *Statutory Construction* (2d ed. 1904), secs. 514, 694; Endlich, *Interpretation of Statutes* (1888), secs. 161, 167.

[13] It is interesting to note that if this case had arisen prior to the adoption of the Constitution, Article IV of the Articles of Confederation which provided that "no imposition, duties

the Federal Government of any of its functions and so modified "every power vested in subordinate governments, as to exempt its own operations from their own influence." *McCulloch* v. *Maryland,* 4 Wheat. 316, 427. This doctrine of federal immunity, accepted in many decisions of this Court,[14] is coextensive with the scope of federal power, for every authorized activity of the United States is an exercise of its governmental power. *Graves* v. *N. Y. ex rel O'Keefe,* 306 U. S. 466, 477; *Pittman* v. *Home Owners' Corp.,* 308 U. S. 21, 32;

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or restriction shall be laid by any State, on the property of the United States, or either of them," would have been dispositive of the case in favor of the Government. See also Article IV of the Ordinance of 1787. Certainly, it cannot be contended that the Constitution, which was designed to remedy the defects of the Confederation by creating a stronger central government, granted the Government a lesser immunity. See Farrand, *The Framing of The Constitution* (1913), pp. 128, 153–154; Burnett, The Continental Congress (1941), p. 398; Story on the Constitution (5th ed. 1891), secs. 229–280; Warren, *The Making of the Constitution* (1937), pp. 3–54; The Federalist, No. XL. The express provision of Article IV of the Articles of Confederation, necessary in a system of sovereign confederated states, was obviously superfluous in a federal system creating a strong national government, especially in view of the supremacy clause. See The Federalist, Nos. XXXIII, XLIV; see also *McCulloch* v. *Maryland*, 4 Wheat. 316.

[14] See e. g. *Osborn* v. *United States Bank*, 9 Wheat. 738; *Thomson* v. *Pacific Railroad*, 9 Wall. 579, 590–591; *Tennessee* v. *Davis*, 100 U. S. 257, 263; *In re Neagle*, 135 U. S. 1; *Ohio* v. *Thomas*, 173 U. S. 276, 283; *Johnson* v. *Maryland*, 254 U. S. 51, 55–56; *Arizona* v. *California*, 283 U. S. 423; see also *Penn Dairies, Inc.* v. *Milk Control Commission of Pennsylvania*, No. 399, this Term, decided March 1, 1943.

Federal Land Bank v. *Bismarck Lumber Co.*, 314 U. S. 95, 102.

A corollary of the principle of federal immunity is the disqualification of the states, either under their police power or under their taxing power, to interfere with the property, operations, or functions of the United States. Because the United States "may perform its functions without conforming to the police regulations of a State," it may construct a dam and reservoir in a state without securing approval of its plans and specifications by the state engineer as required by state statute (*Arizona* v. *California,* 283 U. S. 423, 451); and it may operate soldiers' homes without complying with state inspection or police regulations (*Ohio* v. *Thomas,* 173 U. S. 276).[15] So, too, the driver of a mail truck for the Post Office Department cannot be required to comply with state driving license requirements (*Johnson* v. *Maryland,* 254 U. S. 51; cf. *Baltimore and Annapolis R. Co.* v. *Lichtenberg,* 176 Md. 383, appeal dismissed, 308 U. S. 525), nor may federal agents in a national

[15] "Whatever jurisdiction the State may have over the place or ground where the institution is located, it can have none to interfere with the provision made by Congress for furnishing food to the inmates of the home, nor has it power to prohibit or regulate the furnishing of any article of food which is approved by the officers of the home, by the board of managers and by Congress. Under such circumstances the police power of the State has no application." *Ohio* v. *Thomas*, 173 U. S. 276, 283.

forest and game preserve be subject to the hunting restrictions of the state in which the preserve is located (*Hunt* v. *United States,* 278 U. S. 96).[16]

These cases are controlling. They have not lost their vitality, but, indeed, were cited with approval by this Court in *Penn Dairies, Inc.* v. *Milk Control Commission of Pennsylvania,* No. 399, this Term, decided March 1, 1943. The Court there stated (slip sheet, p. 3):

> We may assume also that, in the absence of congressional consent, there is an implied constitutional immunity of the national government from state taxation and from state regulation of the performance, by federal officers and agencies, of governmental functions. *Ohio* v. *Thomas,* 173 U. S. 276; *Johnson* v. *Maryland,* 254 U. S. 51; *Hunt v. United States,* 278 U. S. 96; *Arizona* v. *California,* 283 U. S. 423. * * *

The *Penn Dairies* case suggests no modification of the principle of federal immunity from state interference. The state price-fixing law there involved was held to be merely an "exercise of control over the seller" from whom the Government

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[16] Numerous other examples may be cited of immunity of the national government from local regulation. The United States may enforce a lien for taxes upon real estate under the internal revenue laws without complying with state law requiring recordation and timely enforcement (*United States* v. *Snyder,* 149 U. S. 210); and a claim of the Government against a decedent's estate will not be barred by failure to file within the time required by state law. *United States* v. *Summerlin,* 310 U. S. 414.

purchased, with only an incidental economic burden passed on to the Government, and imposed "no prohibition on the national government or its officers." While the trend of the decisions was stated to be "not to extend governmental immunity from state taxation and regulation beyond the national government itself and governmental functions performed by its officers and agents," there was no suggestion of an intention to destroy the immunity of the Government itself.[17] We are not here concerned with an attempt by the State of Florida to effectuate a state purpose by means of regulatory statutes directed to persons over whom the state has control, with the incidental consequence of an economic burden or other effect upon the United States. Cf. *Alabama* v. *King & Boozer*, 314 U. S. 1; *Penn Dairies, Inc.* v. *Milk Control Commission, supra.* Here, as we have noted (*supra*, p. 18), the fertilizer was owned by the United States, which held it for sale and distribution to farmers under the Federal Act. Florida officials sought to prohibit such distribution by the United States unless the United

[17] The "present climate of opinion" which looks with disfavor on immunity from suit for governmental corporations (*Keifer & Keifer* v. *R. F. C.*, 306 U. S. 381, 391; *F. H. A.* v. *Burr*, 309 U. S. 242) does not deprive the Government itself of any of its sovereign immunities. See *United States* v. *Shaw*, 309 U. S. 495; *United States* v. *U. S. Fidelity Co.*, 309 U. S. 506; *United States* v. *Emory*, 314 U. S. 423; *United States* v. *Sherwood*, 312 U. S. 584.

States obtained and attached tags to the fertilizer containers and paid an inspection fee to Florida (R. 3–4). There can be no question, and appellants do not contend to the contrary, that the United States was sought to be made the direct and immediate object of the Florida Act's impact. Thus the only issue here is whether a state may impose regulations and restrictions on "the national government itself and governmental functions performed by its officers and agents." We know of no case in this Court which lends support to such asserted authority of a state; rather, as we have seen, the decisions and statements of this Court are uniformly to the contrary.

Like uniformity appears in the tax cases in the field of federal immunity, so far as we are aware, this Court has never held that, in the absence of Congressional consent, the national government or its property may be taxed by a state or local government.[18] The decision in *Alabama* v. *King & Boozer,* 314 U. S. 1, does not cast doubt on this basic principle. The Court there held that an Alabama sales tax may validly be applied to a sale of materials by a dealer to a private contractor who had a cost-plus-a-fixed

[18] The cases are analyzed in the Brief for the United States in *Alabama* v. *King & Boozer*, No. 602, October Term, 1941, pp. 55–61.

fee contract with the Federal Government, because the legal incidence of the tax was on the contractor and not on the Government. The fundamental assumption of the decision was that a tax directly upon the United States or its property would have been constitutionally invalid, for the Court found it necessary to examine the Alabama statute in order to ascertain upon whom the tax was laid and whether the United States was in effect the taxpayer. There was no indication that the principle of immunity of the Government itself was questioned.

Appellants do not attempt to distinguish any of the cases upon which we rely, nor do they challenge their relevance here. Instead they apparently urge (Br. 20–25) that, since the decision of this Court in *Graves* v. *N. Y. ex rel. O'Keefe,* 306 U. S. 466, the Government and its property have lost their constitutional immunity from the application of state laws. Appellants insist that under the present rule the Government has only such immunity as may be found in an Act of Congress, that there is no immunity so derived in this case, and that, moreover, the act appropriating the funds for the purchase of the fertilizer (Public Law No. 674, 77th Cong., 2d Sess.) intended that there should be compliance with state regulatory and inspection laws. These contentions are not sound.

The *Graves* case dealt with the validity of the application of a state income tax to the salary of an employee of the Home Owners' Loan Corporation, a Government corporation. The corporation itself, "including its franchise, its capital, reserves and surplus, and its loans and income", was exempted from state taxation by Section 4 of the Home Owners' Loan Act. The single question before the Court was "whether the tax laid by the state upon the salary of respondent, employed by a corporate instrumentality of the federal government, imposes an unconstitutional burden upon that government" (306 U. S. at 477), i. e., whether the exemption of the Government and its instrumentalities from state taxation extended to immunize the salaries of its employees from state taxation. The Court pointed out that the inquiry was the same as if the Court were dealing with a constitutional immunity, that is, whether the imposition of the tax would place a burden on the Government so as to interfere with its functions. The Court in no way suggested a departure from or any modification of the constitutional immunity of the Government itself, or of its corporations, from state taxation, no matter how non-discriminatory and how slight its actual burden. Indeed, the Court assumed that the Home Owners' Loan Corporation was "clothed with the same immunity from state taxation as the government itself" (306 U. S. at

486), but held that this immunity could not be extended to salaries of employees.

There is no hint in the Appropriation Act here involved (Public Law 674, 77th Cong., 2d Sess.) of intention to subject the Government to state inspection laws. The statute appropriated funds to be available for the purpose of the fertilizer, among other things, and for making grants thereof to agricultural producers, "and for the payment of all expenses necessary in making such grants including all or part of the costs incident to the delivery thereof." This provision relates to such matters as freight expenses, administrative expenses, and other costs voluntarily incurred by the Government; it has no apparent relation to state inspection fees imposed by state statute regardless of the owner's consent. A waiver of a constitutional immunity is not to be inferred from statutory language so susceptible of meaningful construction without the implied abandonment of an established governmental privilege. Cf. *United States* v. *Michel,* 282 U. S. 656; *Price* v. *United States,* 174 U. S. 373; *Schillinger* v. *United States,* 155 U. S. 163; *United States* v. *Shaw,* 309 U. S. 495.[19]

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[19] The Congressmen and Senators from Florida introduced several bills in Congress for the express purpose of subjecting the Government to the inspection laws of the states in carrying out the program here involved. See H. R. 7824, 77th Cong., 2d Sess.; S. 2914, 77th Cong., 2d Sess.; H. Rep. No. 2688, 77th Cong., 2d Sess.; H. R. 1396, 78th Cong., 1st

Appellants' reliance (Br. 33) on *United States* v. *California,* 297 U. S. 175, is mistaken. That case held that a state-owned railway was a common carrier under the Federal Safety Appliance Act and subject to a statutory penalty for violation of the Act. Cf. *Ohio* v. *Helvering,* 292 U. S. 360; see also *South Carolina* v. *United States,* 199 U. S. 437. These decisions were expressly placed on the ground that the states, having engaged in business traditionally of a private nature, could no longer claim any sovereign immunity. See 292 U. S. at 369; 297 U. S. at 183–186.

Appellants urge that since the states may thus be subject to Federal regulation and taxation, the converse must also be true (Br. 33). But that contention has long since been rejected. The immunity of the Federal Government and that of the states are not coextensive, as the supremacy clause of the Constitution itself indicates. See *Graves* v. *N. Y. ex rel. O'Keefe,* 306 U. S. 466, 477–478. And, apart from the constitutional provision, the nature of our federal system necessarily requires "possible differences in application, deriving from differences in the source, nature and extent of the immunity of the governments and their agencies." *Id.,* at p. 478. In *Helvering* v. *Gerhardt,* 304 U. S. 405, these differences and their justification were presented as follows (p. 412):

Sess.; S. 417, 78th Cong., 1st Sess.; S. 150, 78th Cong., 1st Sess. These have not been enacted into law.

> In sustaining the immunity from state taxation, the opinion of the Court, by Chief Justice Marshall [in *McCulloch* v. *Maryland*] recognized a clear distinction between the extent of the power of a state to tax national banks and that of the national government to tax state instrumentalities. He was careful to point out not only that the taxing power of the national government is supreme, by reason of the constitutional grant, but that in laying a federal tax on state instrumentalities the people of the states, acting through their representatives, are laying a tax on their own institutions and consequently are subject to political restraints which can be counted on to prevent abuse. State taxation of national instrumentalities is subject to no such restraint, for the people outside the state have no representatives who participate in the legislation; and in a real sense, as to them, the taxation is without representation. The exercise of the national taxing power is thus subject to a safeguard which does not operate when a state undertakes to tax a national instrumentality.

Moreover, the Federal Government, unlike the states, derives its authority wholly from powers delegated to it by the Constitution; consequently, "its every action within its constitutional power is governmental action, and since Congress is made the sole judge of what powers within the constitutional grant are to be exercised, all ac-

tivities of government constitutionally authorized by Congress must stand on a parity with respect to their constitutional immunity from taxation." *Graves* v. *N. Y. ex rel. O'Keefe,* 306 U. S. 466, 477; *Pittman* v. *H. O. L. C.,* 308 U. S. 21; *Federal Land Bank* v. *Bismarck Lumber Co.,* 314 U. S. 95, 102. Under these accepted doctrines, the weight or extent of the burden sought to be imposed by the state is immaterial. *Johnson* v. *Maryland,* 254 U. S. 51; *Pittman* v. *Home Owners' Corp.,* 308 U. S. 21, 32.[20]

But appellants further seek to avoid the conclusion that the Florida Law cannot constitutionally be applied to the United States by contending (Br. 38–41) that the United States was engaged in a deliberate attempt to evade the Florida inspection laws.[21] Thus appellants suggest that the Government purchased the fertilizer

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[20] Appellants urge that the inspection fee, if permitted in this case, would not be paid by the Government because the amount could be deducted from the benefit payments to the farmers. But this does not alter the obvious impact of the inspection fee upon the Federal Government, especially since the only funds involved in this program are federal funds. Appellants' argument is tantamount to the proposition that a state can levy a property tax on a federal building because the Government can increase the rent to a tenant.

[21] Appellants' assertion (Br. 36) that the Government does not own the land on which the fertilizer was to be used and that the land was subject to the jurisdiction of the State of Florida is beside the point. The Government is not asserting jurisdiction over lands in the State of Florida. In *Ohio* v. *Thomas*, 173 U. S. 276, holding a state regulation constitutionally inapplicable to the federal function of operating a soldier's home, the Court said (p. 283): "In assert-

in Georgia for shipment into Florida for the express purpose of securing immunity from the Florida law. Moreover, they urge that the Government is merely a conduit in effecting a transfer of fertilizer from the manufacturer to the farmer, that the farmer is the real purchaser, and that the Federal Government "pays out no monies because of the State Inspection Fee" (Br. 40). The court below properly rejected these contentions.

Aside from the circumstance that the Government does not predicate its claim of immunity on the fact that interstate shipments are involved in this case, and assuming appellants' assertions relating to the Government's motives to be relevant, it is readily apparent from the record that the purchases of fertilizer were not made in Georgia for the purpose of evading Florida law. The Government purchases fertilizer pursuant to a policy which is economically sound and which keeps the price to farmers (by way of deduction from benefit payments) relatively uniform (R. 96–100). The record shows that by reason of the

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ing that this officer under such circumstances is exempt from the state law, the United States are not thereby claiming jurisdiction over this particular piece of land, in opposition to the lan- ·ge of the act of Congress ceding back the jurisdiction the United States received from the State. The government is but claiming that its own officers, when discharging duties under Federal authority pursuant to and by virtue of valid Federal laws, are not subject to arrest or other liability under the laws of the State in which their duties are performed."

purchasing system established, the cost of fertilizer to Florida farmers is $16.10 per ton, which is deducted from their benefit payments, and this amount "compares favorably with the current commercial price of the same material available for sale in Florida by Florida manufacturers of not less than $20.00" (R. 100). Moreover, the fertilizer producing companies in Georgia are nearer to the Florida points of delivery involved in this case than are the producing companies in Florida, and the freight charges from the Georgia shipment points were considerably less (see R. 100A). Indeed, an analysis of the freight rates for fertilizer coming from Georgia to *all* points in Florida, as opposed to the rates to those points from Florida points of shipment, discloses that in all but two instances the interstate rates were considerably less. In the light of these undisputed facts, the purchase of the fertilizer in Georgia can hardly be found to constitute a scheme to evade Florida law, and the contrary conclusion was properly reached below.

Equally without basis is the contention that the Government was merely a conduit to effect a transfer of fertilizer from manufacturer to farmer. Appellants make no attack on the validity of the transactions of purchase, nor could they, for the record shows, and the court below found, that the Government bought, paid for, and owned the fertilizer involved. Nor was the fertilizer sent by the manufacturers directly to

farmers, as appellants allege. It was sent under Government bills of lading to Federal Agricultural Associations, which are agencies of the United States (R. 113, 114), and the fertilizer was in the possession of those Government agencies when seized. Indeed, far from being an evasion of the state fertilizer regulations, the federal program was the *sine qua non* of the use of the fertilizer by the Florida farmers, for the record shows that without the stimulation of production consequent upon the large-scale Government purchases, there would not have been a sufficient supply of the fertilizer available, and that without the credit extended on account of future benefit payments the farmers in question would be unable to buy the fertilizer even if it were available (R. 10).

With these undisputed facts in the record, there is no room for the contention that the Government's program was undertaken for the purpose of wrapping a cloak of immunity about transactions which otherwise would be subject to state regulation. The fact that the applicability of state regulation may to some extent be curtailed by the Government's activity is of little relevance; for such curtailment naturally attends every exercise of the supreme federal power in a field to which state law may be or has been directed.[22]

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[22] For example, a state statute of limitations may commence to run against a right to recover upon a negotiable instrument, but if the instrument is transferred to the United

Appellants also seem to rely on a contention that the fertilizer owned by the United States was substandard (Br. 6–7; R. 101–103). While not legally pertinent to the principles of sovereign immunity, it should be noted that the Government was not engaged in distributing fertilizer of an inferior grade. The contracts of purchase of the fertilizer from the producing companies provide for analysis of the fertilizer by the Government "according to the method prescribed by the American Association of Official Agricultural Chemists" (R. 79), the very method required by the Florida Law (Sec. 576.18), and provide for rejection of fertilizer falling below certain standards (R. 79). The analysis of the fertilizer is made not only to satisfy the United States that the materials delivered comply with the contract specifications, but also "for the purpose of ascertaining that the farmers participating in this phase of the agricultural conservation program are receiving superphosphate of sufficient quality to enable them to carry out desirable soil building practices" (R. 79–80). Each container of fertilizer must be labelled and tagged by the manufacturer to disclose its phosphoric acid content, in accordance with instructions from the Department of Agriculture (R. 13). After they receive the fertilizer, the Federal Agricultural Associations

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States, its sovereign immunity prevents the accrual of the bar under state law. See, e. g., *United States* v. *Summerlin*, 310 U. S. 414.

are required by official instructions of the Department of Agriculture to take samples in conformity with the rules of the American Association of Official Agricultural Chemists, and to submit such samples to the local state laboratories for analysis (R. 80–81). Analysis by state agencies in the state concerned is welcomed by the Government, and while many states provide this service free of charge, the Government is willing to pay for such services on a contract basis and has done so in some states (R. 81–96). Where arrangements with state laboratories cannot be made, the Agricultural Associations, pursuant to official instructions, mail the samples to the federal laboratories in Beltsville, Maryland (R. 80). In all instances the actual cost of the inspection provided by the Government is less than the statutory fee imposed by state laws (R. 81). The presumption that the Government officials have carried out their prescribed duties under the Federal Act to accept fertilizer of approved analysis only (cf. *Johnson* v. *Maryland*, 254 U. S. 51, 57) need not rest upon speculation here, for it has been proved beyond question.

But the scrupulous care exercised by the Federal Government to assure that only a high grade of fertilizer will be distributed under its program, and the Government's voluntary utilization of state laboratories to analyze the materials, on a fee basis where gratuitous services are not offered, do not invite or justify the imposition of an in-

spection fee upon the Government-owned fertilizer, particularly a fee imposed upon a tonnage basis and having no relation to actual inspection (R. 81–96). Much less does the Government's program authorize or permit seizure of the federal property by state officials for failure to pay the fee exacted without federal consent.

B. Even if the Florida Law could constitutionally be applied to the Government-owned fertilizer, so as to subject it to the inspection and fee requirements, the seizures by appellants were unlawful and unconstitutional.

The immunity of federal property from seizure or attachment is traditional. *The Siren,* 7 Wall. 152; *The Western Maid,* 257 U. S. 419, 433; *Minnesota* v. *United States,* 305 U. S. 382, 386; *United States* v. *Alabama,* 313 U. S. 274, 282; *Maricopa County, Arizona* v. *Valley Nat. Bank of Phoenix,* No. 449, this Term, decided March 1, 1943.[23] The majority below was plainly correct in holding that "the property of the United States is immune from seizure, even to collect a valid tax,

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[23] No suggestion can be made that the doctrine of immunity from seizure is limited only to instances where the seizure is pursuant to court order. The fact that the fertilizer here was taken by executive action pursuant to state legislative authority, would seem to make this an *a fortiori* case. Any attempt by Florida officials to sell the fertilizer pursuant to court order would have been given short shrift. *United States* v. *Alabama,* 313 U. S. 274. The executive arm of the state cannot be more effective to impair a federal constitutional immunity.

and certainly * * * to collect a valid fee" (R. 122).[24]

CONCLUSION

For the foregoing reasons the decision of the court below should be affirmed.

Respectfully submitted,

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APRIL 1943.

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[24] The dissenting judge below agreed with the majority "that the State was probably without power to seize property of the United States, to wit, the fertilizer in question" (R. 118), but he considered the seizure "as purely procedural" (R. 118).

APPENDIX

1. The Soil Conservation and Domestic Allotment Act (16 U. S. C., secs. 590g–590q) provides:

> SEC. 590g. ADDITIONAL POLICIES AND PURPOSES OF CHAPTER.
>
> (a) *Purposes enumerated.*—It is hereby declared to be the policy of sections 590a–590h, 590i, 590j–590q, of this title also to secure, and the purposes of such sections shall also include, (1) preservation and improvement of soil fertility; (2) promotion of the economic use and conservation of land; (3) diminution of exploitation and wasteful and unscientific use of national soil resources; (4) the protection of rivers and harbors against the results of soil erosion in aid of maintaining the navigability of waters and water courses and in aid of flood control; and (5) reestablishment, at as rapid a rate as the Secretary of Agriculture determines to be practicable and in the general public interest of the ratio between the purchasing power of the net income per person on farms and that of the income per person not on farms that prevailed during the five-year period August 1909–July 1914, inclusive, as determined from statistics available in the United States Department of Agriculture, and the maintenance of such ratio. The powers conferred under this section and sections 590h, 590i, 590j–590n, of this title shall be used to assist

voluntary action calculated to effectuate the purposes specified in this section. Such powers shall not be used to discourage the production of supplies of foods and fibers sufficient to maintain normal domestic human consumption as determined by the Secretary from the records of domestic human consumption in the years 1920 to 1929, inclusive, taking into consideration increased population, quantities of any commodity that were forced into domestic consumption by decline in exports during such period, current trends in domestic consumption and exports of particular commodities, and the quantities of substitutes available for domestic consumption within any general class of food commodities. In carrying out the purposes of this section due regard shall be given to the maintenance of a continuous and stable supply of agricultural commodities adequate to meet consumer demand at prices fair to both producers and consumers.

(b) *Cooperation with States; grants.*—The Secretary of Agriculture shall cooperate with States, in the execution of State plans to effectuate the purposes of this section by making grants under this section, to enable them to carry out such plans.

(c) *State plans.*—Any State which submits to the Secretary, prior to such time and in such manner and form as the Secretary prescribes, a State plan to effectuate the purposes of this section shall be entitled to payments, as provided in this section, for the year to which such plan is applicable, if such plan is approved by the Secretary as provided in this section.

* * * * *

SEC. 590h. PAYMENTS AND GRANTS OF AID.

(a) *Duration of authority of Secretary of Agriculture.*—In order to carry out the purposes specified in section 590g (a) of this title during the period necessary to afford a reasonable opportunity for legislative action by a sufficient number of States to assure the effectuation of such purposes by State action and in order to promote the more effective accomplishment of such purposes by State action thereafter, the Secretary shall exercise the powers conferred in this section during the period prior to January 1, 1942, except with respect to farming operations commenced in any State after the effective date of a State plan for such State approved pursuant to section 590g of this title. No such powers shall be exercised after December 31, 1941, except with respect to payments or grants in connection with farming operations carried out prior to January 1, 1942.

(b) *Payments and grants of aid; local, county, State committees; rules and regulations.*—Subject to the limitations provided in subsection (a) of this section, the Secretary shall have power to carry out the purposes specified in clauses (1), (2), (3), (4), and (5) of section 590g (a) of this title by making payments or grants of other aid to agricultural producers, including tenants and sharecroppers, in amounts determined by the Secretary to be fair and reasonable in connection with the effectuation of such purposes during the year with respect to which such payments or grants are made, and measured by (1) their treatment or use of their land, or a part thereof, for soil restoration, soil conservation, or the prevention of erosion; (2) changes in the use

of their land; (3) their equitable share, as determined by the Secretary, of the normal national production of any commodity or commodities required for domestic consumption; or (4) their equitable share, as determined by the Secretary, of the national production of any commodity or commodities required for domestic consumption and exports adjusted to reflect the extent to which their utilization of cropland on the farm conforms to farming practices which the Secretary determines will best effectuate the purposes specified in section 590g (a) of this title; or (5) any combination of the above. * * * In carrying out the provisions of this section in the continental United States, the Secretary is directed to utilize the services of local and State committees selected as hereinafter provided. The Secretary shall designate local administrative areas as units for administration of programs under this section. No such local area shall include more than one county or parts of different counties. Farmers within any such local administrative area, and participating or cooperating in programs administered within such area, shall elect annually from among their number a local committee of not more than three members for such area and shall also elect annually from among their number a delegate to a county convention for the election of a county committee. The delegates from the various local areas in the county shall, in a county convention, elect, annually, the county committee for the county which shall consist of three members who are farmers in the county. * * * In carrying out the provisions of this section, the Secretary shall, as far as practicable, pro-

tect the interests of tenants and sharecroppers; is authorized to utilize the agricultural extension service and other approved agencies; shall accord such recognition and encouragement to producer-owned and producer-controlled cooperative associations as will be in harmony with the policy toward cooperative associations set forth in existing Acts of Congress and as will tend to promote efficient methods of marketing and distribution; shall not have power to acquire any land or any right or interest therein; shall, in every practicable manner, protect the interests of small producers; and shall in every practical way encourage and provide for soil-conserving and soil-rebuilding practices rather than the growing of soil-depleting crops. Rules and regulations governing payments or grants under this subsection shall be as simple and direct as possible, and, wherever practicable, they shall be classified on two bases: (a) Soil-depleting crops and practices, (b) soil-building crops and practices.

The following paragraph was added to the foregoing section 590h (b) by the Act of June 21, 1941 (16 U. S. C., Supp. I, sec. 590h (b):

> Notwithstanding any other provision of law, in making available conservation materials consisting of seeds, seed inoculants, fertilizers, liming, and other soil-conditioning materials, trees, or plants, or in making available soil-conserving or soil-building services, to agricultural producers under this subsection, the Secretary may make payments, in advance of determination of performance by the producers, to persons who fill purchase orders covering

approved conservation materials or covering soil-conserving or soil-building services, furnished to producers at not to exceed a fair price fixed in accordance with regulations to be prescribed by the Secretary, or who render services to the Secretary in delivering to producers approved conservation materials, for the carrying out, by the producers, of soil-building or soil-conserving practices approved by the Secretary.

* * * * *

(d) *Conditions affecting payments or grants of aid.*—Any payment or grant of aid made under subsection (b) shall be conditioned upon the utilization of the land, with respect to which such payment is made, in conformity with farming practices which the Secretary finds tend to effectuate any one or more of the purposes specified in clause (1), (2), (3), (4), or (5) of section 590g (a) of this title.

* * * * *

SEC. 590k. AVAILABILITY OF FUNDS.

All funds available for carrying out sections 590a–590h, 590i, 590j–590q, of this title shall be available for allotment to the bureaus and offices of the Department of Agriculture and for transfer to such other agencies of the Federal or State Governments as the Secretary may request to cooperate or assist in carrying out this chapter, and for payments to committees or associations of producers in any region or regions to cover the estimated administrative expenses to be incurred by any such committee or association in cooperating in carrying out such sections: ***Provided,*** That the Secretary may prescribe that all or

part of such estimated expenses of any such committee or association may be deducted pro rata from the payments or grants made to the members thereof: *And provided further,* That the Secretary may make such payments in advance of determination of performance. (Apr. 27, 1935, ch. 85, § 11, as added Feb. 29, 1936, ch. 104, § 1, 49 Stat. 1150, and amended June 24, 1936, ch. 767, 49 Stat. 1915).

* * * * *

SEC. 590o. APPROPRIATION FOR PURPOSES OF SECTIONS 590g AND 590h; ALLOCATION OF FUNDS AMONG COMMODITIES.

To enable the Secretary of Agriculture to carry out the purposes of sections 590g and 590h of this title there is hereby authorized to be appropriated for any fiscal year not exceeding $500,000,000.

* * * * *

Public Law No. 674 (77th Congress, 2d sess., p. 31) approved July 22, 1942, provides as follows:

* * * * *

To enable the Secretary of Agriculture to carry into effect the provisions of sections 7 to 17, inclusive, of the Soil Conservation and Domestic Allotment Act, approved February 29, 1936, as amended (16 U. S. C. 590g–590q), and the provisions of the Agricultural Adjustment Act of 1938, as amended (7 U. S. C. 1281–1407) (except the making of payments pursuant to sections 303 and 381 and the provisions of titles IV and V), including the employment of persons and means in the District of Columbia and elsewhere; not to exceed $50,000 for the preparation and display of exhibits, including such displays at State, interstate, and international fairs within the United States;

purchase of lawbooks, books of reference, periodicals, newspapers, $450,000,000 to remain available until June 30, 1944, for compliances under said Act of February 29, 1936, as amended, pursuant to the provisions of the 1942 programs carried out during the period July 1, 1941, to December 31, 1942, inclusive: * * * *Provided further,* That such amount shall be available for the purchase of seeds, fertilizers, lime, trees, or any other farming materials, or any soil terracing services, and making grants thereof to agricultural producers to aid them in carrying out farming practices approved by the Secretary of Agriculture in the 1942, 1943, and 1944 programs under said Act of February 29, 1936, as amended, and likewise the amount appropriated under this head for the fiscal year 1942 shall be available for such purchases for such grants in the 1941, 1942, and 1943 programs under such Act; for the reimbursement of any Federal, State, or local government agency for fertilizers, seeds, lime, trees, or other farming materials, or any soil terracing services, furnished by such agency; and for the payment of all expenses necessary in making such grants including all or part of the costs incident to the delivery thereof: * * *

* * * * *

2. The Florida Commercial Fertilizer Law (Florida Statutes, 1941, c. 576) provides in part as follows:

> 576.01 *Definitions.*—In construing this chapter, where the context permits, the word, phrase or term:
>
> (1) "Fertilizer material" shall be construed to mean any material or substance,

except untreated or unprocessed animal, poultry, or vegetable manure, when applied separately, which may be used in the manufacture of mixed fertilizer or which may be applied to the soil for the purpose of improving it or for the purpose of inducing increased crop yield or plant growth.

* * * * *

(3) "Commercial fertilizer" shall be construed to mean and include fertilizer materials or mixed fertilizer.

* * * * *

(10) "Manufacturer" means a person engaged in the business of importing, preparing, mixing, or manufacturing commercial fertilizer for sale, either direct to consumers or by or through other media of distribution, and the word "manufacture" means preparation, mixing, or manufacturing.

* * * * *

(13) "To import" and the word "importing" shall be construed as meaning the bringing of commercial fertilizer into this state from any other state, territory or possession of the United States of America, or from any foreign country, for sale within this state, and the word "importer" shall be construed as meaning the person who brings in commercial fertilizer from any other state, territory or possession of the United States of America, or from any foreign country, for sale within this state.

* * * * *

576.03. *Report required of manufacturers, etc., prior to sale of fertilizers.*—Every manufacturer or importer of, or agent for, the sale of commercial fertilizer within this state shall, previous to offering commercial

fertilizer for sale in this state, and annually thereafter on or before July 1st and before offering for sale thereafter, file with the commissioner of agriculture a written statement giving the name of his principal agent or agents in the State of Florida, also the name and guaranteed analysis under oath of each brand of mixed fertilizer or fertilizer material offered for sale by him, but he shall not be permitted to register any brand of mixed fertilizer of which the available primary plant food constitutes less than fourteen percent; provided, however, that the commissioner of agriculture, upon request from any manufacturer, shall issue a permit to said manufacturer permitting him to manufacture mixed fertilizer of less than fourteen percent available primary plant food when said request is accompanied with a copy of the complete formula showing in detail all ingredients and the amount of each to be used; and provided further that the state chemist has examined and approved such a permit. All provisions of this law shall apply to manufacture and sale of mixed fertilizer under said permit.

576.04 *Registration of brands and mixtures.*—It is unlawful for any manufacturer, importer, or agent for the sale of commercial fertilizer to sell or make delivery of such commercial fertilizer before the registration thereof has been accepted by the commissioner of agriculture and the manufacturer, importer, or agent notified of such acceptance by the commissioner of agriculture.

Any change in or deviation from the information filed upon registration of brands of mixed fertilizers with the commissioner

of agriculture shall constitute a separate brand and shall require a separate registration; provided, however, that secondary plant foods may be added to a brand already registered so long as such addition does not in any way change or qualify any other requirements of the registration previously made, and such addition of secondary plant foods shall not require an additional registration. A mere change in the analysis or percentage of plant food for a fertilizer material shall not constitute a separate fertilizer material, but shall require an additional registration.

576.05 *Reports to be made as to certain shipments.*—Every manufacturer, shipping or delivering commercial fertilizer in lots of one or more tons, shall notify the commissioner of agriculture thereof on the date of such shipment, giving the name and address of consignee, point of destination, and county in which located, quantity and brand or brands, and if shipped by rail in carload lots, the number and initial of the car.

* * * * *

576.07 *Analysis of fertilizers to be shown on tag, etc.*—

(1) Every package of commercial fertilizer, manufactured, imported, transported, distributed, stored, kept or offered for sale or sold in or into the State of Florida, shall have securely attached a tag on which shall be plainly and legibly printed the name or brand of the commercial fertilizer, the name and address of the manufacturer, the net contents of the package in pounds, stating the minimum percentage of total nitrogen, the minimum percentage of nitrate nitrogen, the

minimum percentage of ammoniacal nitrogen, the minimum percentage of water soluble organic nitrogen, the minimum percentage of water insoluble nitrogen, the minimum percentage of available phosphoric acid, the minimum percentage of insoluble phosphoric acid, the minimum percentage of water soluble potash, the minimum percentage of total available primary plant food, and the maximum percentage of chlorine. The sum of the various forms of nitrogen guaranteed shall equal the total nitrogen guaranteed. There shall also be stated on the tag the materials from which the above plant foods are derived.

* * * * *

576.11 *Inspection fee to be paid upon fertilizer materials.*—Every manufacturer or agent for commercial fertilizer shall pay to the state treasurer a fee of twenty-five cents per ton for commercial fertilizer offered for sale in the State of Florida, except raw ground phosphate rock, soft phosphate, colloidal phosphate, phosphatic clays and all other untreated phosphatic materials, peat or humus, and hydrated lime and limestone when sold or used for agricultural purposes, on which materials the fee shall be ten cents per ton. Five cents out of each fee so paid shall be placed into a special fund and not into the general inspection fund of the state, and said special fund shall be available to the commissioner of agriculture for use in enforcing this law; provided that when the manufacturer shall have paid the fee herein named for any person acting as agent or seller for any manufacturer, the agent or seller shall not be required to pay the fee named in this section.

This section shall not be construed as applying to sales of commercial fertilizer by one manufacturer to another.

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576.15 *Duty of sheriff.*—The sheriffs of the counties of this state are hereby authorized, and it is hereby made their duty to seize and sell at public sale, each and every bag, barrel or package of commercial fertilizer, cotton seed meal, castor pomace, tobacco stems, tobacco dust or tobacco meal, manufactured, imported into or sold in this state, which shall not have securely attached the tag or label and stamp mentioned in this chapter. Provided, that should the owner show to the satisfaction of the sheriff that such tag or label or stamp had been attached and the same had become detached, the sheriff shall release the same without cost to the owner.

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576.26 *Selling unstamped or untagged fertilizers.*—Any person who shall manufacture, import, transport, distribute, store, keep or offer for sale, or sell any package of commercial fertilizer or fertilizer material that fails to have attached the tag, or the tag fails to bear the information, required by this chapter, or in case of bulk shipments that fail to have the tag affixed to the car or the copy of the invoice required, or if the said tag fails to have attached the stamp or label showing the payment of the fee required, shall be guilty of a violation of this chapter. The provisions of this section shall not apply, however, where the materials are stored by the manufacturer for mixing purposes or stored by them in public warehouses.

576.27 *Fines and penalties.*—Any person violating any of the provisions of this chapter shall be guilty of a misdemeanor and shall, upon conviction, unless otherwise provided, be fined not less than one hundred dollars, nor more than five hundred dollars for each offense.

* * * * *

3. Pertinent provisions of the Constitution of the United States provide as follows:

Article I, Section 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; * * *

Article IV, Section 3. * * *

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; * * *

Article VI. * * *

This Constitution, and the laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; * * *.

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SUPREME COURT OF THE UNITED STATES.

No. 726.—October Term, 1942.

Nathan Mayo and Roy Hutchinson, Appellants, *vs.* The United States of America.	Appeal from the District Court of the United States for the Northern District of Florida.

[June 1, 1943.]

Mr. Justice Reed delivered the opinion of the Court.

This record presents for review the action of a specially constituted district court in enjoining, on final hearing, the Commissioner of Agriculture of the State of Florida and his agents from enforcing against the United States the provisions of the Florida Commercial Fertilizer Law. Judicial Code, §§ 266 and 238.

By this Florida act the sale or distribution of commercial fertilizer is comprehensively regulated. There is included a requirement of a label or stamp on each bag evidencing the payment of an inspection fee. Unless so identified, the bags may be seized and sold by the sheriff of the county. The purpose of the legislation is to assure the consumers that they will obtain the quality of fertilizer for which they pay and that substances deleterious to the land will be excluded from the material sold. Florida Statutes, 1941, c. 576.

The United States, under the direction of the Secretary of Agriculture, acting under the provisions of the Soil Conservation and Domestic Allotment Act,[1] purchased commercial fertilizer outside of Florida and undertook its distribution to consumers within that state during the fiscal year ending June 30, 1943, without state inspection and without paying for or affixing to the bags the inspection stamps required by the Florida act. This distribution was a part of the national soil conservation program.[2] Through the use of fertilizers with a high content of superphosphate on winter legumes the plan sought, by plowing under the legumes, to obtain scarce nitrogen for the commercial

[1] 49 Stat. 163, 1148; 50 Stat. 329; 55 Stat. 257, 860; 56 Stat. 664.

[2] Sections 7 and 8 of the Soil Conservation and Domestic Allotment Act, as amended.

crops which were to follow. To secure a heavy growth of the legumes before plowing time, the fertilizer should be applied and the legumes planted prior to October 15th. Farmers who desire to participate in the conservation program follow the required practices under the supervision of county committees or associations which are federal instrumentalities for carrying out the plans. Section 8(b).

The soil-building and soil-conserving practices, when carried out by a participating farmer, entitle him to a grant or benefit payment. Section 8. In order that the farmer may earn this grant, phosphate fertilizers are furnished to him in advance by the Government through the county committee. The cost is deducted from the grant. For the purpose of carrying out the program, the United States caused fertilizers purchased by its agents to be shipped into Florida to the local agricultural associations for such distribution. As the sacks were without stamps, the Florida Commissioner of Agriculture on September 10, 1942, gave a "stop sale" notice to the county agricultural association to cease distribution.

The Attorney General of the United States directed the filing of a complaint against the Florida officials who are charged with the enforcement of the Florida law. The complaint set out the "stop sale" notice, the refusal of numerous persons utilized by the United States in its work to proceed with the distribution of the fertilizer without the protection of an injunction, the frustration of the conservation program of the Secretary of Agriculture, the imminency of irreparable damage because of the necessity of prompt distribution of the fertilizer and the lack of any efficient remedy other than a temporary and permanent injunction. Florida objected to the complaint for failure to state a cause of action and set up numerous defenses which have now been reduced by the specification of errors and the brief to the fundamental one that the United States as to fertilizer to be used upon Florida soil is not exempt by Constitution or statute from compliance with reasonable state regulation or the payment of reasonable inspection fees. At any rate, it is urged, inspection fees may be collected under the facts heretofore stated as the Government is merely a conduit or service agent for the fertilizer manufacturer or the Florida farmer.

The District Court disposed, we think, of the conduit or service agent argument by its finding that the Government "became the

owner'' of the fertilizer at the manufacturing plants which are outside the state and was engaged in distributing it in Florida as a part of the national soil conservation program. In promoting soil conservation by precept and demonstration through the Department of Agriculture, the United States, as in its other authorized activities, acts in a governmental capacity.[3] Prior to the Soil Conservation Act, Congress had, as a matter of custom, put money and responsibility in the hands of the executive to promote agriculture in the most general sense. It is commonplace for appropriations to be made for loans to farmers.[4] The distribution of fertilizer owner by the United States as a charge against grants to aid soil conservation is of the same character. Section 8(b). Cf. *United States* v. *Butler,* 297 U. S. 1, 65, 68. No inference of fact or conclusion of law, we think, can be properly drawn from the circumstances of this fertilizer distribution other than that the United States was the owner of the fertilizer in Florida awaiting distribution.

The other findings are substantially in accord with the allegations of the complaint and are not contested. The District Court, one judge dissenting, enjoined the application of Florida law to the above described acts of the United States on the ground of federal immunity from state regulation.

Since the United States is a government of delegated powers, none of which may be exercised throughout the Nation by any one state, it is necessary for uniformity that the laws of the United States be dominant over those of any state. Such dominancy is required also to avoid a breakdown of administration through possible conflicts arising from inconsistent requirements. The supremacy clause of the Constitution states this essential principle. Article VI. A corollary to this principle is that the activities of the Federal Government are free from regulation by any state.[5] No other adjustment of competing enactments or legal principles is possible.

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[3] Graves *v.* New York *ex rel.* O'Keefe, 306 U. S. 466, 477; Pittman *v.* Home Owners' Corp., 308 U. S. 21, 32; Fed. Land Bank *v.* Bismarck Co., 314 U. S. 95, 102.

[4] Establishment of the Department of Agriculture, 12 Stat. 387; of colleges of agriculture, 26 Stat. 417; Federal Farm Loan Act, 39 Stat. 360, 40 Stat. 431; Federal Intermediate Credit Banks, 42 Stat. 1454; Federal Farm Board, 46 Stat. 11; boll weevil grant, 45 Stat. 539, 565.

[5] McCulloch *v.* Maryland, 4 Wheat. 316, 427; Ohio *v.* Thomas, 173 U. S. 276, 283; Owensboro National Bank *v.* Owensboro, 173 U. S. 664, 667; Johnson *v.* Maryland, 254 U. S. 51; Arizona *v.* California, 283 U. S. 423, 451.

Appellants' argument in support of the inspection fee is that neither the Constitution nor any federal statute exempts the United States from paying reasonable state inspection fees to support permissible regulation of commercial fertilizer. Such inspections are allowable where the United States is not the owner. *Patapsco Guano Co.* v. *North Carolina,* 171 U. S. 345; *Red "C" Oil Co.* v. *North Carolina,* 222 U. S. 380, 392. Appellants urge that since they are allowable to protect the farmers against the imposition of fertilizers of quality possibly inferior to the manufacturers' representations, the inspection fee should be paid on fertilizers distributed by the United States, where the federal law is silent as to any exemption on the ground of sovereignty. Reliance is placed upon *Graves* v. *New York ex rel. O'Keefe,* 306 U. S. 466.

It lies within Congressional power to authorize regulation, including taxation, by the state of federal instrumentalities.[6] No such permission is granted here. Compare 56 Stat. 664. Congress may protect its agencies from the burdens of local taxation.[7] There are matters of local concern within the scope of federal power which in the silence of Congress may be regulated in such manner as does not impair national uniformity.[8] There are federal activities which in the absence of specific Congressional consent may be affected by state regulation.[9] *Graves* v. *New York ex rel. O'Keefe, supra,* upon which appellants rely so strongly is in this latter group. In that case, an employee of the Home Owners' Loan Corporation, a Federal agency which was assumed to have the same immunity from state taxation as the United States itself, sought exemption from New York's income tax on the ground that a tax upon the employee's salary imposed an unconstitutional burden upon the federal government. This position was not without precedent.[10] Upon full reexamination of the authorities and the reasoning upon which the earlier cases had allowed the employees of one sovereignty freedom from the exac-

[6] Owensboro National Bank *v.* Owensboro, 173 U. S. 664, 667; Baltimore National Bank *v.* Tax Comm'n, 297 U. S. 209; Pacific Coast Dairy, Inc. *v.* Dept. of Agriculture of California, No. 275, October Term 1942, p. 5.

[7] Pittman *v.* Home Owners' Corp., 308 U. S. 21, and cases cited.

[8] Standard Dredging Corp. *v.* Murphy, No. 722, October Term 1942; California *v.* Thompson, 313 U. S. 109.

[9] Alabama *v.* King & Boozer, 314 U. S. 1, 9, and cases cited.

[10] Dobbins *v.* The Commissioners of Erie County, 16 Pet. 435; Collector *v.* Day, 11 Wall. 113; New York *ex rel.* Rogers *v.* Graves, 299 U. S. 401; Brush *v.* Commissioner, 300 U. S. 352.

tions of the other, this Court declared that in the absence of a federal declaration of immunity from state taxation, no such "tangible or certain economic burden is imposed on the [United States] as would justify a court's declaring that the [employee] is clothed with the implied constitutional tax immunity of the government by which he is employed." Page 486.

These inspection fees are laid directly upon the United States. They are money exactions the payment of which, if they are enforceable, would be required before executing a function of government. Such a requirement is prohibited by the supremacy clause. We are not dealing as in *Graves* v. *New York etc., supra,* with a tax upon the salary of an employee, or as in *Alabama* v. *King & Boozer,* 314 U. S. 1, with a tax upon the purchases of a supplier, or as in *Penn Dairies, Inc.* v. *Milk Control Comm. of Pennsylvania,* No. 399, October Term 1942, decided March 1, 1943, with price control exercised over a contractor with the United States. In these cases the exactions directly affected persons who were acting for themselves and not for the United States. These fees are like a tax upon the right to carry on the business of the post office or upon the privilege of selling United States bonds through federal officials. Admittedly the state inspection service is to protect consumers from fraud but in carrying out such protection, the federal function must be left free.[11] This freedom is inherent in sovereignty. The silence of Congress as to the subjection of its instrumentalities, other than the United States, to local taxation or regulation is to be interpreted in the setting of the applicable legislation and the particular exaction. *Shaw* v. *Oil Corp'n,* 276 U. S. 575, 578. But where, as here, the governmental action is carried on by the United States itself and Congress does not affirmatively declare its instrumentalities or property subject to regulation or taxation, the inherent freedom continues.

Affirmed.

Mr. Justice BLACK concurs in the result.

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[11] Similar conclusions have been reached in adjacent fields. The state is powerless to punish its citizens for acts done in exclusively federal territory. Pacific Coast Dairy, Inc. v. Dept. of Agriculture of California, No. 275, October Term 1942, decided March 1, 1943. A state cannot tax land of the United States situated within the state even though the state has not ceded sovereignty to the United States. Van Brocklin v. Tennessee, 117 U. S. 151, 177.